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LEGAL ASPECTS OF EUTHANASIA

Vincent C. Allred, LL.B.

Legal Department, National Catholic Welfare Conference, Washington, D. C.

THIS paper will discuss euthanasia, or "mercy killing," from a legal viewpoint. The discussion is particularly directed to that form of euthanasia contemplated in a proposed bill, introduction of which was unsuccessfully attempted at the 1947 session of the New York General Assembly. The proposed bill would have permitted that "any person of sound mind over twenty-one years of age who is suffering from severe physical pain caused by a disease, for which no remedy affording lasting relief or recovery is at this time known to medical science, may have euthanasia administered" at his own request and after a judicial hearing. It, therefore, contemplated euthanasia of a voluntary type. However, if a statute permitting voluntary euthanasia is ever enacted, we can be sure that there will be immediate agitation to broaden its provisions so as to authorize its compulsory application to certain classes, for instance, those suffering from painful and incurable illness, the mentally deficient, the aged, and others in ever broadening categories. The author will limit his discussion to the legal aspects of the subject. It is taken for granted, of course, that euthanasia in any form is a most heinous violation of the Divine and natural law.

Euthanasia in a Non-Existent Legal Status

The actual present status of euthanasia may be summed up in a few words. In the United States euthanasia is prohibited everywhere and under all conditions. Nowhere is it tolerated either by statute or judicial decision. However, if a statute purporting to legalize euthanasia should ever be enacted, then mercy killing could be practiced under its sanction without fear of legal penalties. (There will be no discussion as to the

possibility that state legislation of this nature might be held invalid under the Constitution of the United States.) How would this legislation square with previously existing concepts of law? To answer these questions, we must review briefly some fundamental principles of jurisprudence.

Divine and Natural Law

The law under which we live in the United States is derived from the common law of England. The common law, in turn, was the product of social evolution over centuries. It represents a social and political development the origin of which is lost in the antiquities of the Angles, the Saxons, and other ancient inhabitants of Britain. It was developed in the every day life of a rude community. Its principles were evolved by hard headed men of action. In all respects the common law is, and always has been, eminently practical and keyed to the everyday life of men. Christianity softened many of its harsher features and made men more conscious of the need for abstract justice in their dealings with one another. Two of England's chancellors have been canonized, St. Thomas a'Becket and St. Thomas More. It is certain that in a legal system, sometimes presided over by saints, there would be of necessity a striving to follow the Divine and natural law, however far it might fall short of that ideal in everyday experience.

The judges and lawyers who developed the common law were cognizant of the precepts of Divine and natural law. Nor was this consciousness lost when England left the Catholic Church. English lawyers, migrating to America, took with them these high principles, and, from the beginning, they have been an element of our own law. It has been said that:

"Christianity has been declared to be the alpha and omega of our moral law and the power which directs the operation of our judicial system. It underlies the whole administration of the government, state and national, enters into its laws, and is applicable to all because it embodies these essentials of religious faith which are broad enough to include all believers." Zollman, American Church Law, 1933, p. 26.

Sire William Blackstone has very concisely defined the relationship existing between Divine and natural law, and the laws enacted by men:

"*Law of Nature.* This law, being coeval with mankind and dictated by God Himself is obligatory on all. No human laws are of any validity if contrary to this, as they derive their force and authority from this original. We must discover what the law of nature directs in every circumstance of life, by considering what method will tend the most effectively to our own substantial happiness."

"*Revealed Divine Law.* In compassion for the imperfections of human reason, God has mercifully at times discovered and enforced his laws by direct revelations. These are found in the holy scriptures. These

precepts, when revealed, are really a part of the original law of nature. The revealed law is of greater authenticity, than the moral system framed by ethical writers, termed the natural law, because the one is the law of nature, as declared to be by God Himself; the other is only what, by the light of human reason, we imagine to be that law."

"*Foundations of Human Law.* Upon these two foundations, the law of nature and the law of revelation, depend all human law; i.e., no human law should contradict them. Upon indifferent points, the divine and natural law leave a man at his own liberty, subject for the benefit of society to restrain within certain limits * * *."

"*Example Instance of Murder.* This crime is expressly forbidden by the Divine law, and demonstrably by the natural law, and from these prohibitions arise the true unlawfulness of the crime. Those human laws that annex a punishment to it do not increase its moral guilt. If, therefore, any human law should allow or enjoin the commission of such crime, we should disobey such law, or we would offend both the natural and the divine."

"*Unimportant Matters.* In unimportant matters, not commanded or forbidden by those superior laws, the inferior legislature has opportunity to interpose and to make that action lawful which before was not so." Blackstone's Commentaries on the Law, Gavit's Edition, p. 27.

How was mercy killing regarded under common law? One may search in vain among the ancient writers for even a mention of mercy killing. The killing of the helpless aged was practiced among Teutonic peoples in early pagan times (Westermark, Ethical Relativity). This was definitely a savage custom and disappeared before the dawn of the historical era.

Attention is called to Blackstone's remarks, above quoted, on the subject of murder, and his opinion of any human law which might attempt to legalize it. In another portion of his Commentaries he speaks thus of the sanctity of human life:

"*Right of Personal Security. Defined.* This right consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.

"*Life.* This right is inherent by nature in every individual and exists even before the child is actually born.

"*Natural Death.* The natural life, the gift of the Creator cannot be legally destroyed by an individual, neither by the person himself, nor by any class of individuals, merely on their own authority." Blackstone's Commentaries on the Common Law, Gavit's Edition, p. 70.

Mercy Killing in the Law

There is nowhere in the common law any toleration for mercy killing. Nowhere is it even mentioned by the law writers of Blackstone's period and before. We might, therefore, inquire into the treatment afforded under the common law to subjects akin to mercy killing, such as assisting and abetting a suicide, abortion, and so forth. Under the Euthanasia bill, recently proposed to the New York Legislature, the consent of the victim is required, so that he participates in his own death, and the transaction bears considerable resemblance to suicide. How was suicide regarded under common law, both as to the party himself, and as to any person who might assist him in his effort? Let us return to Blackstone:

"Self murder is one form of this crime (felonious homicide) which was the pretended heroism, but real cowardice, of the Stoic philosophers; who thus avoided ills, which they had not the fortitude to endure. Though apparently countenanced by the Civil Law it was denounced by the Athenian law, which ordered the offenders hand to be severed from his body. The English law ranks suicide among the highest crimes, and if it has been done through the advice of another, such accessory is guilty of murder."

"The law in such cases can only reach the man's reputation and fortune. Hence, it has ordered an ignominious burial in the highway with a stake driven through the offender's body and the forfeiture of his goods and chattels to the king." Supra, 830.

We cannot, of course, justify the forfeiture of goods which will affect only the surviving relatives, who may be innocent, nor the ghastly revenge wreaked on the corpse, but at least this method of punishment does graphically illustrate the horror with which self destruction was regarded. It will be noted that the accessory to a successful suicide was deemed guilty of murder.

How is suicide, and assistance thereto, regarded in the United States? To date, all jurisdictions follow the common law rule. In most states the criminal law has been codified. The statutory codes follow common law principles, however, and the courts turn to the common law for interpretation in doubtful cases. In some states there are statutes specifically providing that any person aiding in a suicidal attempt is guilty of criminal offense. Statutes of Kansas and New York are set forth as typical of this group:

"Every person deliberately assisting another in commission of self murder shall be guilty of manslaughter in the first degree." Section 21-408, General Statute of Kansas, 1939.

"Suicide is the intentional taking of one's own life." Section 2300, Article 202, Book 39, McKinney's Consolidated Laws of New York.

"Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator, no forfeiture is imposed." Section 2301, supra.

"A person who willfully, in any manner, advises, encourages, abets or assists another person in taking the latter's life is guilty of manslaughter in the first degree." Section 2304, supra.

Even in states which have not enacted statutes on the subject, persons who aid in suicide attempts have been held guilty of murder or manslaughter by application of common law principles. The case of People v Roberts, 178 N.W. 690, (Michigan 1920) 13 American Law Reports 1253, is a leading case on this point. It will be noted that this case also involves the principle of mercy slaying.

In that case the defendant's wife suffered from an incurable illness, and desiring to die she requested the defendant to place near her bed a cup containing a mixture of Paris green. Defendant did as she requested, and his wife drank the mixture and died. He was convicted of murder in the first degree and the sentence sustained by the Supreme Court of Michigan. Quoting from the opinion:

" * * * counsel contends, in substance, that suicide is not a crime in Michigan; that defendant's wife committed no offense in committing suicide; that if she, as principal committed no offense, defendant committed none as an accessory before the fact; in short, if the principal is not guilty the accessory is not. * * * But defendant * * * is charged with murder. * * * The important question, therefore, arises as to whether what defendant did constitutes murder by means of poison * * *."

"In considering the status of one who advises or aids another to commit suicide, Cyc has this to say:

"Where one person advises, aids or abets another to commit suicide and the other by reason thereof, kills himself, and the advisor is present when he does so, he is guilty of murder as a principal, or in some jurisdictions, of manslaughter, or if two persons mutually agree to kill themselves together, and the means employed to produce death take effect upon one only, the survivor is guilty of murder of the one who dies. But if the one who encourages another to commit suicide is not present when the act is done, he is an accessory before the fact, and at common law, escapes punishment because his principal cannot be first tried and convicted. The abolition of the distinction between aiders and accessories in some jurisdictions has, however, carried away this distinction, so that a person may now be convicted of murder for advising a suicide, whether absent or present at the time it is committed, providing the suicide is the result of the advice." (37 Cyclopedia of Law and Procedure 521)

"It is said in Tiffany on Criminal Law, p. 828, that 'he who kills another at his own desire or command is a murderer as much as if he had done it of his own head.'

"We are of the opinion that, when defendant mixed the Paris green with water and placed it within reach of his wife, to enable her to put an end to her suffering by putting an end to her life, he was guilty of murder by means of poison within the meaning of the statute, even though she requested him to do so."

The Legal Guilt of the Accessory

It will be noted that the legal guilt of the accessory to a suicide was definitely established at common law, but, on account of a procedural point, the accessory was sometimes able to escape punishment. This "blind spot" has been corrected in most jurisdictions as illustrated in the Roberts case. It may be said that there is today no state in the union in which the person who assists in a suicide attempt is free of criminal guilt. The case of Grace v State, 69 S.W. 529 (Texas 1902) and Saunders v State 112 S.W. 68 (Texas 1908) are sometimes cited in an attempt to hold that this rule does not hold in Texas. However, attention is called to the following language in the Saunders decision:

"If appellant furnished ..... with the carbolic acid at her request, with full knowledge on his part that she intended to take it, and did take it, and destroyed her life, he, having no further agency in it, would not be guilty. But if, knowing her purpose of destroying her life, at her request, he prepared the medicine and himself placed it in her mouth, and she swallowed it, then it would be an administration of this poison, and he would be punished in case of death as a murderer."

It may be considered then that the decision in the Saunders case turns on the point of causation only, and while the soundness of its reasoning may be questioned from the viewpoint of logic and morals, it does not make the Texas rule an exception to the basic principle upheld elsewhere. (For other cases on this point of the guilt of the accomplice to a suicide, see the annotation to the Roberts case, 13 A.L.R. 1253.)

While speaking of suicide, the "suicide pact" might be mentioned as bearing on the topic of mercy slaying. The rule is stated as follows in American Jurisprudence:

"With the possible exception of those jurisdictions where neither the person who commits suicide nor the one furnishing the means of committing it, violates the law if two persons mutually agree to kill themselves together, and the means employed to produce death take effect on one only, the survivor is guilty of the murder of the one who dies. The fact that the deceased consented will not remove the case from the grade of felonious homicide." 26 Am. Jur. 217.

The case of Turner v State, 108 S.W. 1139 (Tennessee 1908) 15 Law Reports Annotated, New Series 988, concerned a suicide pact. In the opinion is found a very concise exposition on the law on this subject:

Defendant was convicted of murder, having shot to death the deceased woman, with whom he had carried on a love affair. Evidence indicated that the two had planned a suicide pact, but after the death of the deceased, defendant could not go through with his part. The Supreme Court of the State sustained the conviction. Quoting from the opinion:

"The fact that the woman consented and the crime was in execution of a joint agreement would not remove the case from this grade of felonious homicide, since the crime embraced all the elements of malice, deliberation, and premeditation necessary to constitute murder in the first degree. Murder is no less murder because the homicide is committed at the desire of the victim. He who kills another upon his desire or command is, in the judgment of the law as much a murderer as if he had done it merely of his own head * * *."

Mercy Killing and Abortion

Another matter which is akin in principle to mercy killing is that of abortion, together with the offense involved when the woman dies in consequence. As abortion, is usually performed with the consent of the woman, the element of consent by the victim is involved. "In criminal law the crime of abortion is the wilful bringing about of an abortion without justification or excuse. At common law such act was a misdemeanor only." 1 American Jurisprudence 133.

All the American states have enacted statutes specifically providing that any abortion not deemed necessary for the preservation of the mother's life is an offense. In addition most states have specifically provided that, if the woman dies, the perpetrator is guilty of felonious homicide in some degree. The statute of Illinois is typical:

"Whoever, by means of any instrument, medicine, drug or other means whatever, causes any woman, pregnant with child, to abort or miscarry, or attempts to procure or produce an abortion or miscarriage, unless the same were done as necessary for the preservation of the mother's life, shall be imprisoned in the penitentiary not less than one year, nor more than ten years; and if the death of the mother results therefrom, the person procuring or causing the abortion or miscarriage shall be guilty of murder." Section 3, Chapter 38, Smith Hurd Annotated Statutes of Illinois.

The decision of State v Moore, 25 Iowa 128, 95 American Decisions 776 (1868) contains a very concise resumé of the common law principles underlying these points:

The Supreme Court of Iowa approved conviction of murder in second degree of defendant who administered a drug to the deceased woman, with her consent, to produce an abortion. She died in consequence. Quoting from the opinion:

"The right to life and to personal safety is not only sacred in the estimation of the common law, but is inalienable. It is no defense to the defendant that the abortion was procured with the consent of the deceased.* * *."

"We hold, therefore, that, in cases of homicide, malice may, as at common law be implied from any act unlawful and dangerous in its nature, unjustifiably committed."

"Nearly two hundred years ago, Lord Hale laid down the law as follows: 'If a woman be with child, and any one give her a potion to destroy the child within her, and she takes it, and it works so strongly that it kills her, this is murder: for it was not to cure her of a disease, but unlawfully to destroy the child within her and, therefore he that gives a potion to this end must take the hazard and if it kills the mother, it is murder.' (Hale, Pleas of the Crown, 429.)"

Duelling

Another instance of legal guilt despite the consent of the deceased is in regard to the duel. The common law principle is stated in American Jurisprudence as follows:

"If two men deliberately agree to fight a duel with deadly weapons, and the duel is fought pursuant to agreement, and one of them is killed, his slayer is guilty of murder." 26 American Jurisprudence 290.

There were times in the past when this principle of law was honored more in the breach than in the observance. However, the principle has always been in force. Some of the American states have enacted legislation specifically prohibiting the duel.

Mutilation

The same moral principle heretofore discussed in connection with euthanasia has been applied to the common law offenses of mayhem and mutilation. "Mayhem * * * is the violently depriving another of the use of such of his members as may weaken him in fight. Hence, the cutting off or disabling a man's hand or finger, the striking out his eye or foretooth, or depriving him of parts of his body which sustain his courage are held to be mayhems." Blackstone's Commentaries, Gavit's Edition, page 838. This common law concept of mayhem had its origin in the king's solicitude that his subjects be preserved from such physical injury as would detract from their effectiveness as soldiers. The infliction of other physical injuries was covered under the lesser common law offenses of assault, battery or wounding.

"It has been held that if one maimed himself or procured himself to be maimed, both he and the party by whom the maiming was effected were subject to fine and imprisonment." 40 C. J. 2.

It is probable that the royal prerogative had something to do with this element of non-consent in mutilation cases. Yet the principle established is in conformity with that prevailing in other fields of the criminal law. There is no reason to suppose that it would have been otherwise, even had there been no consideration involved in connection with military effectiveness.

Motives and Mercy Killings

We find few American cases turning on the point of mercy killing specifically. It is stated in American Jurisprudence:

"Only a very small number of cases of homicide have turned on the humanitarian motives of the slayer. In all such cases, however, where the strict legal rights of the people (the prosecution) have been pressed, the courts have held that the fact that the killing was done to relieve suffering, present or prospective, or was done from some other humanitarian motive, neither excused the killing nor mitigated the offense. The fact that the motive of the slayer is unselfish, or, according to moral standards what may be termed 'good' is not ordinarily recognized as a defense." 26 American Jurisprudence 228. (The propriety of this reference by American Jurisprudence to such standards as "good" may, of course, be questioned, but that does not affect the principle stated.)

One case in which the defendant attempted to make "mercy killing" a defense was that of People v Roberts, supra.

Another case of interest, although the defense of mercy killing was not specifically invoked was that of People v Sherwood, 3 N.E. (2d) 581 (New York 1936).

The defendant, a poverty stricken widow, drowned her two year old son, because, being unable to find work, she feared she could not support him. She was indicted for first degree murder. It appeared from the official report that on her trial the matter of mercy killing was not interposed as a defense, but rather a question of sanity. She was convicted as charged, but the conviction was set aside in the Court of Appeals on account of procedural errors. When again arraigned for trial she was permitted to enter a plea of guilty of manslaughter. She was sentenced to prison, and paroled after serving two and a half years on a fifteen year sentence. (Sunday Mirror Magazine, August 18, 1940)

There have been a number of other cases chronicled in the daily press, and on which, there being no appeal to an appellate court, there are no official reports available. The results in such cases have sometimes been influenced by the personal feelings of judges and juries, so that while in some instances the full penalty of the law was enacted, in others the accused received mild punishment or complete exoneration. Under our system of trial by jury, the jury has the power to acquit if it unanimously

sees fit, no matter how clear the guilt of the accused may appear. For instance, juries sometimes acquit the husband who had killed in cold blood his spouse's lover, when court room appeal is made to the so called "unwritten law."

It has been held in cases where death resulted from abortion that "While consent to, desire for, or request of criminal abortion would not constitute a defense, the jury is privileged to consider such facts in reaching their verdicts." State v Decker, 104 S.W. (2d) 307 (Missouri, 1937)

These situations where an accused may win acquittal, or conviction in a lesser degree of the offense, through the sympathy of the jury do not constitute any weakening of legal principles involved. The jury system, of itself, tends to incline our criminal procedure on the side of clemency. It is in this regard, a safety valve, against instances where to follow the strict letter of the law might work a real injustice in fact. For one thing it permits consideration of circumstances to indicate that the accused may have been truly ignorant of the actual malice of his deed, or may have acted under the stress of some overwhelming emotion, not amounting to legal insanity. It is almost inevitable that there will be instances where jurymen blinded by well meaning, but misguided sympathies, will bring in verdicts contrary to legal principles or the precepts of morality. That is part of the price we pay for the great boon of the jury system, and the remedy is not its abolition, but rather education of the public from which juries are drawn.

But regardless of what judges, juries or governors, with their pardoning power, may do in individual cases involving mercy killing, the principle of law remains unchanged.

As long as common law principles in regard to the sanctity of human life remain in effect, euthanasia, voluntary or otherwise, will be unlawful.

"The right to life and to personal safety is not only sacred in the estimation of the common law, but it is unalienable." State v Moore, supra.

The observation of the court on the suicide pact in the case of Turner v State, supra, is equally applicable to euthanasia. "The fact that the woman consented and the crime was in execution of a joint agreement would not remove the case from this grade of felonious homicide, since the crime embraced all the elements of malice, deliberation and premeditation necessary to constitute murder in the first degree." Murder is legally defined as "the killing of one human being by another with malice aforethought." 26 American Jurisprudence 161.

There may be some callous enough to say that persons in some of the classes proposed for extinction by proponents of euthanasia can hardly be called human beings, for instance idiots or frightfully deformed infants. But it is the law that "the killing of a lunatic, an idiot, or even a child unborn is murder." State v Jones, 1 Mississippi 83 (1821)

Likewise there may be some who will say that the element of "malice" is absent in mercy killing, as the killer may have the most kindly feeling toward his victim. Such persons betray their ignorance that the term "malice" is used in this connection to express an extremely technical meaning. It does not necessarily indicate that the killer had any personal hatred or ill will toward the victim. This point is well covered in the case of Turner v State, supra:

"It may be said, however, that there is an absence of express malice, a necessary ingredient of the crime of murder, in the first degree, since it is not shown there was hatred, or ill will, or malevolence on the part of the prisoner toward the deceased.* * * An actual and deliberate intention to take the life of another, or to do him some great bodily harm from which death might probably result, constitutes express malice.* * * It thus appears that it is not necessary that express malice, in the sense of hatred or malevolence toward the deceased, should be shown in order to support a verdict of murder in the first degree."

Furthermore, legal malice is the element which differentiates the more serious offense of murder from that type of felonious homicide known as manslaughter. Manslaughter is a serious offense, only slightly less culpable than murder. At common law manslaughter "is an unlawful killing of a human being done without malice, express or implied, either in a sudden quarrel or unintentionally while in the commission of an unlawful act." 26 American Jurisprudence 165. Most states have enacted statutes setting out the elements of murder and manslaughter, and often providing for different grades or degrees in each offense. These statutes in general follow common law principles, however, therefore, even if the element of malice be omitted, mercy killing still contains all the elements of manslaughter. However, if it is difficult to see how euthanasia could fit in any classification other than that of murder "with malice aforethought."

The Future Legal Status of Euthanasia

Such is the law as it exists in the 48 states today. But, after all, existing law may be changed, and new laws enacted by constitutional conventions and legislative assemblies. If the legislature of any state sees fit to enact a statute legalizing euthanasia, then euthanasia will be technically legal in that state. We know that there is some sentiment in this country, and elsewhere, in favor of legalizing euthanasia. It is difficult to say how numerous may be the proponents of this sentiment, but they are quite vociferous. Bills to legalize the practice were introduced unsuccessfully in the British Parliament in 1936, and in the Legislature of Nebraska in 1937. And as above stated there was an attempt made to introduce such a measure at the 1947 session of the New York General Assembly. It is probable that the proponents of euthanasia expected these early failures. Most likely their thought is to try again and again

in the hope that each succeeding effort will bring them nearer to success.

The agitation for euthanasia cannot be justified under the principles of the common law, which looks to the Divine and natural law as supreme on all vital concerns. But of late years there has arisen a school of jurisprudence which refuses to acknowledge either Divine or natural law as having any binding force. Legal pragmatism is defined as "a philosophy of law for the adjustment of principles and doctrines to the human condition as they are to govern, rather than from assumed first principles * * * Pragmatism worships at the altar of social reform. The pages of the sociologist teem with the inequalities of our social, marital and industrial relations * * *." Pragmatism as a Philosophy of Law, by Walter B. Kennedy, 9 Marquette Law Review 63, February 1925.

Pragmatic Jurisprudence

The pragmatic philosophy of law is sometimes referred to as sociological jurisprudence." In the work, "Jurisprudence" by Francis P. LeBuffe, S.J., Ph.D., and James V. Hayes, LLB, 1938, we find the following comments on this system:

"Sociological jurisprudence proposes a social theory of the nature of the legal order. It sees the present day stress on the social purposes of law rather than on the analysis of legal rules and maxims as a progressive step in legal philosophy.* * * It believes law to be a modern instrument for the satisfaction of human interests. The task of lawmakers is to recognize the human desires that are seeking realization in our society and satisfy them with the least of friction and the least of waste. * * * Sociological jurisprudence knows no way of valuing the respective merits of the interests which are presently being realized by law. Likewise it is without any norm for determining the relative worth of conflicting interests when one group in society proposes the legalization of a particular interest, the prescription of which is demanded by a different group. It has no method of getting at the intrinsic importance of any human want, and it seems skeptical of the possibility of establishing an ultimate norm against which to measure the merits of suggested legal aims.* * * It advocates pursuing whatever purposes are recognized as the 'received ideals' of the time and place." Page 70.

It is not intended to go into any exhaustive discussion of the relative merits of conflicting views on jurisprudence. But it is easy to see that, in the philosophy of legal pragmatism, one may find the arguments by which it is sought to justify euthanasia. If we should determine, as the proponents of euthanasia claim, that those suffering from incurable malady should be permitted the privilege of self-destruction, then, according to the pragmatist, the law should be amended to authorize such procedure. That such is prohibited by the natural law and the law of God is immaterial to them. Natural law and Divine law, according to the

pragmatist are persuasive only, not binding. And, of course, there are not lacking those who deny the existence of any higher law. Law, they say, is the command of the sovereign, the will of the people. It is a thing in the last analysis of brute force. If you have enough bayonets and atom bombs you can make and enforce any kind of law you wish.

It is not claimed that all advocates of legal pragmatism favor euthanasia. Probably the great majority of them abhor euthanasia as much as we do. But they have debarred themselves from urging against it the most effective argument. They may argue that it is socially undesirable, that it violates concepts of human pity, and so forth. But, of the sovereign power in the state (the majority of the people in a democracy, or the dictator in a totalitarian regime) decides in favor of euthanasia, they can argue no further. There is no stronghold of moral power to which they can retreat. They cannot say with Blackstone: "if, therefore, any human law should allow or enjoin the commission of such crime, we should disobey such law, or we would offend both the natural and the divine." Even less could they say, as did St. Peter "We must obey God, rather than men." Regardless of how the followers of legal pragmatism may personally feel on the subject of euthanasia, if this practice is ever legalized, it must be under the principle they advocate. That is, that the legislature has the right to legalize any practice, no matter how it may square with the Divine and natural law, if only the same is deemed socially desirable at a given time and place.

Sterilization and Euthanasia

At this point it might be in order to say a few words about the sterilization legislation which has been enacted in a number of American states. Statutes of this nature, while differing in detail, provide in general that the operation of sterilization may be performed on mental defectives who might otherwise transmit this deficiency to their children. The constitutionality of such statutes has been sustained in the Supreme Court of the United States in the case of Buck v Bell, 274 U. S. 200, 71 L. Ed. 1000, 47 S. Ct. 584 (1927). In the opinion in that case it is stated as follows: "The judgment finds the facts that have been recited, and that Carrie Buck 'is the probable potential parent of socially inadequate offspring, likewise afflicted, that she may be sexually sterilized without detriment to her general health, and that her welfare and that of society will be promoted by her sterilization.' In view of the general declarations of the legislature and the specific findings of the court, obviously we cannot say as a matter of law that the grounds do not exist, and if they exist they justify the result."

Catholic thought regards sterilization as morally wrong for the reason that it is an unwarranted mutilation of the human body and sinful. It does not deprive the subject of life, but it does deprive him of a physical

member on the one hand, and denies life to his otherwise possible offspring on the other. It was observed by a legal annotator for American Law Reports in an annotation to a sterilization case reported at 40 A.L.R. 535 as follows: "It may be said in limine that asexualization of the feeble minded opens a dangerous door which leads to the position that the state may in its discretion destroy all feeble minded persons." This theoretical speculation calls to mind the recent Nazi gas chambers.

There is, of course, a wide difference in fact between sterilization and euthanasia, if only because the one destroys already existing life, while the other does not. But, as pointed out, the former is a "dangerous door" to the latter. Among other things it would appear that the legal justification for sterilization is another instance where the doctrines of pragmatism have been applied in jurisprudence. It is sustained, not by any reference to the moral or natural law, nor by appeal to legal deduction, but solely on the basis of a newly originated social theory to the effect that the state is justified in going to this length of human mutilation to prevent the possibility of "socially inadequate offspring." Those social and legal mentalities which approve sterilization can very readily fall into acceptance of euthanasia. This illustrates the basic fallacy inherent in the pragmatic conception of law. "It has no method of getting at the intrinsic importance of any human want * * * It advocates pursuing whatever purposes are recognized as the 'received ideals' of the time and place." Jurisprudence, by LeBuffe and Hayes, supra. It has been used to secure judicial approval for sterilization. It can be urged as a justification for euthanasia.

Euthanasia In Judicial Philosophy

It would appear, therefore, that insofar as its legal aspects are concerned, the controversy over euthanasia does not concern judicial precedent as much as judicial philosophy. If we follow the common law view that human law must be in harmony with Divine and natural law, insofar as vital principle is concerned, euthanasia is unthinkable. If we follow the philosophy of pragmatic jurisprudence then we can only argue as to the social factors involved and cite legal precedents.

Mercy killing has been practiced in savage communities. "We find, for instance, among many people the custom of killing or abandoning parents worn out with age or disease. It prevails among a large number of savage tribes and occurred formerly among many Asiatic and European nations, including the Vedic people and people of Teutonic extraction * * * This custom is particularly common among nomadic hunting tribes, owing to the hardships of life and the inability of decrepit persons to keep up in the march. In times when the food supply is insufficient to support all the members of a community it also seems more reasonable that the old and useless should have to perish than the young and vigorous."

"And among peoples who have reached a certain degree of wealth and comfort the practice of killing the old folks, though no longer justified by necessity, may still go on, partly through survival of a custom inherited from harder times, and partly from the human intent of putting an end to lingering misery. What appears to most of us as an atrocious practice may really be an act of kindness, and is commonly approved of, or even insisted upon, by the old people themselves." Westermarck Ethical Relativity, page 184.

As civilization progresses mercy killing tends to disappear. Instead of killing their aged parents men began to pride themselves on caring for the helpless old folks. And with Christianity there appeared the sublime conception that suffering ennobles both the one who suffers, and him who ministers to the sufferer. And these principles, even if not expressed in so many words, were deeply written into the common law under which our civilization reached its maturity.

The advocates of mercy killing say that we are all wrong about this. All the great judges and lawyers of the common law, were wrong. The experience of fifteen hundred years has been a blind alley in this respect. The skin clad caveman was socially correct and morally justified when he beat out his mother's brains because the old woman asked for an extra portion at dinner.

Of course, they will say that the New York bill provides for only voluntary euthanasia with all sorts of safeguards to prevent abuse. But one thing leads to another, and once we have voluntary liquidation, there will be an agitation to broaden the law to include all those whom the mercy killers feel are not fit to live. There is no help for it; when we adopt euthanasia in any form we are on the path back to the jungle.

Theocentric or Anthrocentric Morality

Therefore, in conclusion, let us repeat that while there is no legal precedent for euthanasia, citation of legal precedents alone will not avail. The issues are too deep and fundamental. It is part of the conflict between two systems of thought; between that system which recognizes its obligation to God and His Law and the other system which claims that man need have no higher motive than the gratification of his own desires. And as reflected in the law, the conflict is between the common law school of thought which pays reverent tribute to the Divine and natural law, and those new legal philosophies which hold that law is no more than the command of the sovereign, be that sovereign a legislative majority or the dictator of a totalitarian state.

MEDICAL OPINION CONCERNING EUTHANASIA

ALPHONSE M. SCHWITALLA, S.J.

Moderator, Federation of Catholic Physicians' Guilds, St. Louis, Mo.

MEDICAL opinion concerning euthanasia has reached the repetitive echo stage. The medical arguments adduced in the five years 1930-1934 were repeated with increasing emphasis in the next quinquennial period 1935-1939, were dying down in volume and stress during the next period from 1940-1944 and since that time, have apparently reached the weakness of inaudibility. From 1930-1934, no fewer than twelve papers were listed in the Cumulative Index, the titles of which indicated some relationship to euthanasia. During the subsequent five years, twenty-two articles were listed; in the following five year period, there were five articles and since 1945, none were listed, indicative of any relationship to euthanasia. Such is the evidence concerning trends in medical opinion about euthanasia, which can be elicited from a more or less rapid perusal of the entries under "Death" in the Cumulative Index.

While all of this emergence and submergence of medical interest in euthanasia was occurring, there was a gradual rise of popular social, legislative and perhaps, ethical interest in the questions centering in euthanasia. Extreme opinions ranged from the viewpoint of Hinman,[1] who states that "Doctors have long been given the power of life and death," to the opinion of Canon Green, of Saint Pauls, quoted by Dr. Millard,[2] President of the Society of Medical Officers of Health, "I have found it impossible to discover any really conclusive arguments against suicide under due restrictions."

THE MITIGATION OF PAIN

Medical opinion has a tendency to theorize, rather than to "pragmatize" about euthanasia, using as the starting point of its analysis, the accepted and unquestioned principle that one of the functions of a doctor is to relieve pain. Zak[3] emphasizes the thought that the allaying of pain by the physician through the use of sedatives might be included in the concept of euthanasiastic procedures. Euthanasia would thus belong to the humane responsibilities of the physician. Strecker[4] reviewing the debate on the Euthanasia Act in the House of Lords in 1936, explicitly states that the purpose of the Act under debate was to legalize what is common practice among physicians, namely, to allay pain as death ap-

proaches. He thinks that legalizing procedures concerning the administration of drugs which have sedative, anaesthetic and narcotic properties, belongs to medical practice and hence, there is no reason why the right to the administration of such drugs, as death approaches, should be denied to the physician. Throughout the discussion, the thought recurs that it is the place of the physician to give relief from pain and to prevent pain not only in life but also in death.

Hinman [5] is of the opinion that therapeutic euthanasia by which he means allowing an incurable sufferer to die, is being practiced habitually by doctors, as for example, when a physician keeps a woman dying of cancer continuously in a state of euphoria. In his opinion, too, doctors sometimes do this unknowingly and ignorantly and he pleads that this practice should be legalized, with full understanding of its significance by the doctor and with full acceptance by him of his responsibilities.

From this starting point, medical opinion diverges in many directions. These diverse opinions, however, are less medical in their content than social or psychological or economic. They are derived from medical considerations but in themselves, are rather consequences of medical opinion than the subject matter of real medical judgment. Thus Hinman [6] extends the application of euthanasia not merely to the mitigation of pain at the time of death but to the elimination of certain individuals "To end a life that is useless, helpless and hopeless seems merciful. The end should be welcomed. The act then is kind rather than ruthless and the result could not but benefit the living." He goes on to discuss *what lives* are "useless, helpless and hopeless" and concludes that they are the lives of those who have become unfit in the struggle of life, inclusive of idiots, the insane, imbeciles, morons, mild and severe psychopaths, criminals and delinquents, monsters, defectives, incurables and the wornout senile. All of these, so it is said, are of no apparent use in the world; they require care but without the hope of betterment.

Brill [7] takes up the argument but gives it a somewhat different connotation: "If the person is so ill that he is beyond any medical help, so that sooner or later he will surely die, and if in addition, he is in agony and often prays for death, why not help him die?" Brill answers by indirection that the question as thus posed demands too much, for if the question applies to those who are beyond any medical help, why should we not ask the same question concerning those who are beyond economic and religious and educational help since these needy groups also, are indigent and are very definitely charges upon the state. If those who are beyond medical help might be aided to die, why not those who are in financial embarrassment or in danger of social ostracism or in danger of a mental breakdown? Hence, so Brill says, many euthanasiasts would be in favor of following the principle through to its logical conclusion if only any one of us could

say "who is incurable." Incorrigible criminals are even more of a nuisance to society than are physical incurables. Brill raises the question whether it would always be advantageous to society financially to get rid of useless members. He instances incorrigible criminals. If we could get rid of useless members, would we be in favor of mercy killings? He answers his own question: "I am against it not for religious or any other emotional considerations but for purely psychological reasons." Mercy killings would do men incalculable harm for the simple reason that killing of human beings, as for example, in war or in legitimate self-defense results in serious disturbing influences on civilized mankind. Mercy killings would demoralize the physician by destroying the sacredness of human life. Hence, any relaxation in such controls of death as men are exercising, threatens to destroy society. However, among those who have expressed themselves in publications during the last decade or so, Brill's is almost the only vigorous voice that protests against the views of those physicians who have given much thought to the subject.

The Mitigation of Pain in Death

If it is desirable that the humanitarian urge be gratified by reducing suffering, and if medicine, consequently, attempts to support this humanitarian outlook, then surely, a reduction in suffering seems most indicated as death approaches. Wolbarst,[8] among many others, says that men should be given at least as much consideration as is given to dumb animals. The latter are put out of their pain as they approach death; but to assist a dying human being to die more easily is subject to the severest penalties. "It is a crime punishable by death to interfere with the unnecessary and incurable suffering of a human being." He thinks that: "There is nothing noble or glorifying in the ultimate death struggle." As long as there is a purpose in suffering, it might well be endured, and it may be courageous or heroic to endure it, but euthanasia eases the final passage when further suffering is useless and without purpose. If this is the case, then euthanasia must be considered a factor in the progress towards social betterment.

An undercurrent of similar views runs through the opinion of many other physicians. The question may well be raised whether these views, even though not expressed in contemporary literature, are not in reality much more common than the meagerness of the literature would lead one to think. One hears the thought expressed at times that euthanasia defends the right of the individual to die peacefully and painlessly. The assertion of this alleged right in this bald form challenges one's thinking. Does the individual have the right to die peacefully and painlessly? It might well be conceded that he has the right to die or that he certainly will die but does he have the right to die as he himself chooses? And even if he had such a right, are there no limits to his freedom of choice? Surely,

none of us can defend the right to die when he himself pleases nor the right to quarrel with anyone if we die differently than we had anticipated. And surely, even if one wanted to quarrel, what good would there be in doing so if the circumstances of one's death have become so coercive as to make a change in the circumstances of one's death both a practical and a theoretical impossibility.

The Moral Right to Administer Narcotics

It seems desirable at this point to examine into the question why, if a physician really has the right to administer sedatives, analgesics and narcotics, his right to administer them when he knows they will result in death, or even to administer them in order to hasten death, should be limited. In his practice, the practitioner is often confronted with a serious dilemma in this matter. If he does not administer the drug for relieving pain, the patient must continue to endure pain and that mere fact may hasten the patient's death. If, on the other hand, the physician administers the drug, the condition of the patient himself may be such that the effect of such administration is simply unpredictable and often enough, the drug itself might accelerate the coming of death. In such a moment, the physician must fall back upon his own personal philosophy of life and upon his own philosophy of medical practice. If death is looked upon as merely a biological phenomena, it might conceivably make little if any difference, other things being equal, whether a patient's life is prolonged for ten minutes or shortened by ten minutes. If, on the other hand, it is realized, as certainly a physician above all people should realize, that the moment of death is the most important moment of life, the moment for which the whole of life is but a preparation, the moment upon which depends the patient's fate for an immortal eternity, then surely, the gravity of the physician's decision is simply overwhelming. The dominant controlling and limiting consideration cannot be whether or not the patient is going to continue in suffering or whether he will be relieved but rather, whether, as far as the physician can be held responsible, the patient will be in such a condition at the moment when death comes that he will face that indescribably important moment in full consciousness and in the full possession of his senses even though he be in pain and suffering.

The right to deprive a patient of his consciousness even for the purpose of relieving his pain, is not an absolute and unlimited right. It is contingent upon circumstances, upon the physician's intentions and perhaps on many other considerations. The physician must have a laudable and worthy purpose or at least not a vicious one, to deprive a patient of consciousness. Hence, if, as happens at the moment of approaching death, other considerations must prevail, in fact, must be given dominant consideration over the relief from pain, then surely, the physician who insists that even under such circumstances he will administer a drug, may be

guilty of a real crime which may have the farthest reaching consequences. Unless the assurance is all but certain that a patient has used all the means to ensure a death, as far as he is able to achieve it, in the friendship of God, it certainly cannot be questioned whether any physician has the right to administer a narcotic with a definite foreknowledge that the patient will probably die in the ensuing narcosis. It is sometimes said, especially in non-Catholic hospitals, that Catholics desire to receive all the sacraments of the dying first before subjecting themselves to a terminal narcosis. A physician who disregards such a wish is, of course, unjust and uncharitable to his patients. As a matter of fact, however, a physician, Catholic or otherwise, who fails to safeguard the spiritual welfare of his patient, even at the cost of the severest pain, under such conditions, must be held accountable for the serious consequences which may ensue with reference to the patient's eternal welfare.

All of the considerations adduced in the preceding paragraph must be evaluated as having a distinct bearing on the problem of euthanasia. In other words, the physician's right to deprive a person of consciousness, under whatever reason, must enter into a judgment regarding the morality of euthanasia. But we are here concerned rather with medical opinion and with other aspects than merely the anaesthetic aspect.

The Elimination of the Unfit

Wolbarst [9] points out that among physicians there are three groups who hold extremely diverse opinions with reference to euthanasia. The first and largest of these groups "favors voluntary euthanasia to be administered only upon request of the sufferer for whom no care is known to medical science." The second group favors the application of euthanasia only to those in early life who are doomed to live useless lives because of impaired development, teratological structure or birth accidents. The third group is the real extreme group; these physicians would include among those who should be "euthanasized" not only the congenital defectives, the aged and those who are suffering from incurable disease, but also the incurably insane, the paralytic, and the helpless criminal. From this classification of physicians alone, if from no other source, there become obvious some of the extremest fallacies surrounding euthanasia.

We have already quoted above the list of those whom Hinman regards as "useless, helpless and hopeless" as well as those whom he regards as unfit to live. Kennedy [10] makes a further distinction. He admits that at one time in his life, he was in favor of legalizing euthanasia. Now, he says, "My face is set against the legalization of euthanasia for any person who having been well at last become ill, for however ill they be, many get well and help the world for years after." Kennedy, however, is "in favor of euthanasia for those hopeless ones who should never have been born—nature's mistakes. In this category it is, with care and knowledge, im-

possible to be mistaken in either diagnosis or prognosis." To quote Hinman [11] again, he admits that not all doctors, even of those who favor euthanasia, are convinced that the removal of the unfit, so-called, would benefit, the race. Naively, he points out, that if all the unfit were eliminated, much "material" for research and investigation would be uselessly destroyed. As if, in case such humans could be used for research and investigation, their "unfitness" to live would thereby be lessened. Kanner [12] attempts a different classification of possible candidates for treatment by euthanasia: first, "those so markedly deficient in their cognitive, emotional and constructive conative potentialities that they would stand out as defectives in any type of existing human community"; secondly, "those individuals whose limitations are definitely related to the standards of the culture which surround them." The implication of this classification is that the first of these groups could be euthanasized since by supposition, they would stand out as defectives in any human community. The second group, however, should not be deprived of life since the simpler treatment for them would be to put them into an environment in which their limitations could be merged satisfactorily in relation to the standards of the culture into which they would then have been transplanted. Kanner further holds a view similar to that of Wolbarst already described. He suggests that euthanasia be applied not to those who have been well and who have become ill but to those who should never have been born.

The Doctor's Power of Life and Death

Clearly, in these various classifications, the physician who administers euthanasia is acting in a capacity which right reason and sound ethics find it impossible to concede to him. We have already referred to the attitude expressed by Hinman [13] that: "Doctors have long been given the power of life and death." By whom have they been given this power and what is the extent of the power and if they have the power, which is their responsibility for the use of that power? And having used or misused that power, what power is there in this life to whom or to which they are answerable? There is, of course, a fundamental distinction between physical power and moral power. A physician, physically speaking, may have the power of life and death, that is, he may administer a drug which will kill but surely, no one will assume that, therefore, any physician is the arbitrar of our life and death, any more than I could assume that parents have the moral power of life and death over their infant child simply because they have the physical power. Or do we hark back to the pristine days of a philosophy of might, of infanticide, of arbitrarily legalized murder? It need not be pointed out here that there is no conceivable reason which could justify the inclusion in a single law for eliminating from human society through euthanasia, the catalogue of all those unfortunates whom Hinman and Wolbarst include as potential candidates for euthanasia. It seems all but incredible that this line of thinking could

have been formulated seriously. Murder is murder whether it is legalized through an alleged law or whether it is performed by the arbitrary exercise of power by an individual.

Voluntary Euthanasia

This leaves for further consideration, the question of voluntary euthanasia, that is, the choice to die, by one who is suffering from an incurable, painful or fatal disease and who, upon request to his physician, becomes a candidate for a voluntary death at a time and under circumstances determined by agreement between himself and his physician. It seems almost unnecessary to point out that no matter what refinements of logic might be used to distinguish between voluntary euthanasia and suicide, such efforts cannot destroy the fundamental identity of the two. If there is any difference, the difference lies in the fact that in one instance the person who chooses to die, actually and physically deprives himself of life; in the other instance, the patient simply chooses or acquiesces in a choice while the physician physically brings about the death. It is the self-determination of the individual human being of the time and place and manner of his own death which fundamentally establishes the identity of suicide and voluntary euthanasia. Sophistries here have no place in the discussion. Suggested motivations, as for example, that in suicide a man performs a cowardly act because he cannot stand up against the pressures of life, whereas, in euthanasia he does a courageous act because he liberates his friends and relatives from the onus of supplying nursing care, have no bearing upon the fundamental similarity of the two situations which in the last analysis, are both methods of escape from allegedly overwhelming circumstances. The suicide and the patient who requests euthanasia are both attempting to exercise jurisdiction which they do not possess, that is, jurisdiction over their own lives.

The Patient in Coma

A word must here still be added regarding a group of patients for whom, if for anyone, so it is said, euthanasia should be provided, namely, for the patient who lives in an unbroken coma for a period of time or who lapses into unconsciousness and while unconscious, sinks by imperceptible stages to the zero point of death. Is it not merciful to administer drugs to such a patient? Presumably, the patient himself does not gain by his premature death since by supposition he is unconscious but the bystanders, the relatives and friends of the patient are the ones, so it is said, who would be benefited by legalizing the administration of a drug under such conditions. Here again, there is no one who has the power to give the order for the administration of such a drug. We have already seen that the physician does not have the power of life and death in a true sense of the word. The patient himself is unconscious and even if he were conscious, he would not have the right to say that he should die. Obviously, the

relatives do not have this right. Again, the physician would presume to hold a divine prerogative if he attempted to decree the death of an unconscious patient even though he felt morally sure that such a patient would not regain consciousness.

Objections to Euthanasia

In many of the considerations which we have just discussed, we are already far beyond a merely medical opinion. We are already in the field of social or legal thought and the considerations have the most diverse implications. We must now turn to some of the objections which have been foreseen by physicians to the possible extension of legalized euthanasia. Millard [14] in his presidential address already referred to, points out that ethical objections to euthanasia are disposed of by the opinion of certain members of the clergy. If they find no arguments against euthanasia nor against suicide, their opinion offsets the opinion of other clergymen who hold views against the ethical liceity of euthanasia. The fallacy here is too obvious to require uncovering. Millard says further, that the chief legal objection which he finds against euthanasia is this, that friends might wish to dispose of a person for selfish reasons either, let us say, to be rid of troublesome relative or friend or to gain financially by their death, as for example, by securing the benefits of a life insurance policy. If this were all that the law has to say on the matter, it would be sad indeed. As a matter of fact, the law upholds a much more dignified, ethically correct and objectively true attitude towards the dignity of man than would seem to be implied in Millard's discussion.

Lord Horder, to whom reference is made by Strecker [15] in his report on the debate in Parliament, produced an argument against euthanasia which might be desirably developed at greater length. He feared that the passing of an euthanasia law might weaken the confidence between patient and physician if such a law legalizes any phase of the activities of the physician which the patient might suspect or disapprove. This objection to the law is really profound and far reaching. Lord Horder points out, furthermore, that the relation of the physician to the relatives of the patient would be seriously imperiled if euthanasia were permitted. By way of illustration, one need only recall instances in one's own experience. In some instances, relatives seem to insist that everything be done to prolong the patient's life by the use of even the most unreasonable means; in other instances, probably just as numerous, relatives are anxious to have death come as soon as possible once it is realized that medicine is helpless to cure. What is more significant still is that relatives of patients change their minds from time to time about such matters. Immediately after a patient's death, they might wish that they had not given whatever approval they gave. Out of such an attitude, there may grow legal consequences of the utmost complexity for the physician.

Millard [16] is inclined to brush aside all such objections. He admits that in the beginning, the number of persons availing themselves of euthanasia would probably be very small. In the course of time, however, after persons of some prominence had chosen this mode of death for themselves and have thus set an example to the nation, many would be encouraged to choose euthanasia. Millard himself says that he does not wish to have his suggestions treated as utopian. If our citizens have accepted and later approved other innovations which prior to such approval they opposed, at times vigorously and bitterly, then surely, we should have some hope for the general acceptance of euthanasia. It is interesting to note of what innovations Millard is thinking and his choice of examples is eloquent enough. "In view of the drastic and revolutionary changes that have come about in recent years such as the innovation of 'summer time,' the legalization of cremation and the toleration of birth conrtol," we should expect the gradual development of a more healthy attitude towards euthanasia.

Procedure

Prematurely anticipatory or otherwise, there is considerable discussion how euthanasia, if it were legalized, could be controlled, and how through such control, abuses might be forestalled. This fact is particularly interesting since it is clear that some of the proponents of particular procedures would seem to imply, if not to state explicitly, that if only satisfactory methods for control could be devised, there would be very much less reason to worry about the moral phases of euthanasia or, for that matter, about the medical phases. Many of the proponents of the special methods of control emphasize predominantly the sociological aspects of euthanasia. Several authors seem to suggest that just as in some states it is required that consultation be asked with competent physicians before a therapeutic abortion may be done, there be also medical consultation before euthanasia. To be assured that the legal aspects of euthanasia are all taken care of, one finds the suggestion that an application be filed for court action on properly prepared forms and with full consideration by the physician, the patient, the relatives and financially interested parties. It is even suggested that witnesses should be heard both about the wishes of relatives and about the opinions of the patient. Kennedy [17] dealing with euthanasia of the defective child has this to say: "I believe when the defective child shall have reached the age of five years—and on the application of his guardians—that the case should be considered under law by a competent medical board; then it should be reviewed twice more at four-month intervals; then if the Board, acting, I repeat, on the application of the guardians of the child, and after three examinations of a defective who has reached the age of five or more, should decide that that defective has no future nor hope of one; then I believe it is a merciful and kindly thing to relieve that defective—often tortured and convulsed, grotesque

and absurd, useless and foolish, and entirely undesirable—of the agony of living."

For fear that someone may have objections to this procedure in dealing with the defective child, Kennedy indulges in a brief meditation in social philosophy and points out that lethargic conservatism in dealing with the law corrects no social ills, but that such correction can be effected only through growth of the law "along with the amplitude of our new ideas for a wiser and better world." He says: "Now, the Law is the garment of our social body. A garment which must grow and shrink with the growth of reduction of us it covers. On our body, sometimes it constricts; as it did during the years of prohibition. In that silly period we allowed a law that drove down on the organism so much that the organism had to cut its way out. However, should the social organism grow up and forward to the desire to relieve decently from living the utterly unfit, sterilize, the less unfit, and educate the still less unfit—then the Law must also grow, along with the amplitude of our new ideas for a wiser and better world, and fit the growing organism easily and well; and thereafter civilization will pass on and end in beauty."

If it be argued that these elaborations of legal procedure would be discouraging to the masses of the people who might conceivably desire to die by euthanasia, we should reconsider Dr. Millard's [18] position. He admits that at first the number of persons who would take advantage of euthanasia would probably be very small. He hopes, however, that by the example of prominent persons, choosing euthanasia, others would be encouraged to follow their example. Dr. Millard feared that his suggestions might be considered utopian but as a matter of fact, he himself tells us that he derived a measure of assurance from the remembrance of the drastic and revolutionary changes which have come about in recent years despite the initial popular opposition to a new idea. The ideas which, in Dr. Millard's mind, have yielded to public opinion despite the opposition with which they were first met, are "the innovation of 'summer time', the legalization of cremation, the toleration of birth control." Whatever may be said about changes of opinion concerning 'summer time,' as it is called in England rather than "daylight saving time" as we call it, it would apparently seem quite certain that neither cremation nor the toleration of birth control are quite as general, as Dr. Millard's choice of these social phenomena as illustrations of the breakdown of popular antipathies to innovations in ethics, would have us believe.

A Word in Conclusion

The evidence for medical opinion favoring euthanasia in so far as current literature reveals it, is remarkably scarce. The evidence for the preference of the medical profession for euthanasia under certain controlled conditions, is almost equally scarce; but whatever current litera-

ture there is in medical journals, is to a large extent, in favor of euthanasia. This, of course, is to be expected and the fact does not signify, as it has been said to signify, that the very frequency with which opinions are expressed favoring euthanasia by members of the medical profession, indicates a veering towards euthanasia by physicians. It is self evident that those who are in possession of the situation need not be as eager to attack the contrary view or to defend themselves against an attack as those who seek to dislodge an ethically, historically and medically entrenched position.

Whatever States may adopt or reject a proposal for the legalization of euthanasia, will find, as New York has found, that there is behind the legal safeguards of our civilization, a strong conservative element which is willing to move onward towards great achievements in the interest of conservative progress but which will not go along with ethical modernism nor with revolutionary novelty. Medicine will not forego its age-old tradition and its time-honored principles that its purpose is to conserve life and that as long as a patient is alive, the effort must be made to keep him still longer alive.

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MORAL ASPECTS OF EUTHANASIA

HILARY R. WERTS, S.J.

Dean, and Professor of Moral Theology, Alma College, Alma, Calif.

EUTHANASIA, or "dying well," could signify a courageous or a holy death. In the mind of the physician and the moralist, it has meant easing the pain which often accompanies death, by the use of therapeutic doses of narcotics. Such euthanasia is in itself a licit procedure, although it sometimes involves moral problems. But the term "euthanasia," in the modern sense here discussed, has been degraded to mean "easy death" by lethal doses of drugs, or by other means to hasten the end of life. It is euphemistically called mercy death, or merciful release, when in reality it is suicide, or murder, or a murder-suicide pact.

The modern spirit of materialism and agnosticism has confused good and evil with pleasure and pain, and made the purpose of life pleasure instead of virtue. The result is a pagan sentimentalism which finds good in anything that promotes pleasure, and has sanctified divorce, adultery, and controception. The desire to curtail physical suffering as an unmixed evil has now led to the organization of various euthanasia societies here and in England, and to the proposal of legislation to legalize mercy murder. The medical profession has been infected to the extent that a poll by the Institute of Public Opinion reported in 1937 that fifty-three per cent of the doctors polled favored mercy killing. A group of non-Catholic ministers in New York stated that in certain circumstances voluntary euthanasia "should not be regarded as contrary to the teaching of Christ or to the principles of Christianity." [1]

VOLUNTARY EUTHANASIA

Only voluntary euthanasia, at the request of the sufferer and with legal safeguards, is the present aim of mercy murder propagandists. But involuntary euthanasia is the logical development of their false philosophy, and this is contemplated by leaders of the movement, as appears from their propaganda. Before opposition made them cautious, they were more outspoken in this than at present. Rev. Dr. C. F. Potter, a euthanasiast leader, in 1936 advocated the lethal chamber for incurable imbeciles.[2]

Voluntary euthanasia is suicide on the part of the person requesting it, for suicide is the directly intended killing of self. It is the use of any voluntary and effective means to end one's life, either neglect of the or-

dinary means of preserving life, or use of positive means to cause death, by one's own hand or by the hand of another requested to deal death. Voluntary euthanasia is directly intended death of self, and must not be confused with death merely permitted to result from the pursuit of some legitimate good; e.g., the death of a soldier who goes into danger in line of duty, or of a patient who submits to a necessary but dangerous operation. In suicide, death is the final purpose, or a desired means to attain some apparent benefit.

The morality of voluntary euthanasia is not a new problem in moral theology, although the present proposals refine the methods of execution. St. Alphonsus Liguori, a Doctor of the Church by reason of his normal doctrine, wrote two centuries ago that it is never allowed to kill oneself directly, in order to escape a more difficult death.[3] In this he echoed the teaching of earlier moralists, a teaching that has undergone no change in the face of euthanasist arguments.

Pope Pius XI, in his encyclical on marriage, said of voluntary sterilization:

> Christian doctrine establishes, and the light of human reason makes it most clear, that private individuals have no other power over the members of their bodies than that which pertains to their natural ends; and they are not free to destroy or mutilate their members or in any way render themselves unfit for their natural functions, except when no other provision can be made for the good of the whole body.[4]

What is true of voluntary sterilization is *a fortiori* true of voluntary death. Christian doctrine has always so understood the divine command, "Thou shalt not kill," [5] and the light of human reason teaches that suicide is contrary to the natural law in every case without exception.

Briefly, the argument is based on the supreme dominion of the Creator over the life of His creature, a right that He does not yield to man against an innocent neighbor, but only for just capital punishment or for legitimate self-defense. The right to destroy anything belongs to him for whom it primarily exists; and God has created man primarily for His own divine service and glory. Hence God, not man, has the right to end human life, and self-inflicted death is an invasion of the right of the Lord of life, a shirking of service due.

Self-annihilation is contrary to the innate tendencies of any living being. The fundamental instinct of man is self-preservation. All his natural powers tend to his own well-being and development. To choose to direct them to destruction is to pervert the purpose of nature and so to violate the intention of the Creator, Who has given these powers and has instilled into every normal man an instinctive aversion to dissolution.

This normal instinct appears even in those who theoretically approve euthanasia. A case is reported in which a man, his wife, and their doctor, were enthusiastic euthanasiasts, but when the wife suspected she had cancer, she insisted on being examined and treated in a Catholic hospital, where she hoped to be safe from the 'mercy' of her husband and her doctor.[6] Dean Inge admitted his inconsistency in approving euthanasia, but not for himself.[7]

Voluntary euthanasia therefore violates nature, and violates the right of nature's Creator. Man has no right to destroy his own life. Consequently he has no right to ask another to kill him, for he cannot transfer a right he does not possess. One who yields to such a request takes part in the invasion of the Creator's right, and so commits murder.

Legal Right Versus Moral Right

But, argue the euthanasiasts, the state has a higher right than the individual, and as it may execute a criminal, so may it also execute its useless and burdensome members. Not so, for there is no parity between the criminal and the unfit. Capital punishment is a penalty for a crime and a deterrent to other possible criminals. The criminal, who is naturally a member of society because of his rational human nature, voluntarily cuts himself off from society by his crime. He voluntary withdraws from the rational order in which he has the rights of an independent person; and forfeiting these rights, he subjects himself to the death penalty. There can be no question of such withdrawal and penalty in the case of an innocent man. The innocent man always retains his rights as a rational being, even when his rational powers are incapable of exercise or he is a burden or menace to society through no fault of his own.

Nor can the deterrent aspect of capital punishment have any application to euthanasia, which is concerned with involuntary and unavoidable physical or mental deficiency.

But the euthanasiast might argue that the more fundamental justification of capital punishment is the promotion of the common good. And the common good can be promoted by removing those who are a burden to themselves, their families, and the state. This contention is based on a false concept of the common good, the totalitarian concept which led to Hitlerian practices for which prosecutions were conducted at Nuremberg. This false philosophy supposes that the individual in his entire being is wholly subordinate to the state (or race). His every activity must contribute to the advancement of the state which is man's final end on earth, and is its own final end, subject to no higher purpose, as if the state were an independent entity, separate from its members, and a god.

Sound reason denies this totalitarian concept. The good of the state is not the final purpose of man, but rather the state is a means to assist

man to attain his final purpose. The state is for man, not man for the state. The state is a natural and necessary instrument for the development and perfection of human beings, and men are subordinate to the state since they are naturally destined to social cooperation for the common good; not however, for the good of the state as a separate entity (which does not exist), but for the good of the members who make up the state. As a member of the state, man is a means to its ends; but as a human person he has human dignity and independence, and the fundamental right that he cannot be used as a mere instrument for the benefit of any other person or of the state. He has a higher purpose than the benefit of any other human being or human institution, and so cannot be completely subordinate to them. This is recognized in every healthy society; it is set down in our Constitution which teaches that men have certain inalienable rights, including the right to life.

Euthanasia, inflicted by the state, is a violation of this fundamental right which is protected by the natural law and by the law of God. "The innocent and just person thou shalt not put to death." [8] Pius XI, in the encyclical already quoted, condemned therapeutic abortion in words which express the natural law against murder by the state:

> Those who hold the reins of government should not forget that it is the duty of public authority by appropriate laws and sanctions to defend the lives of the innocent, and this all the more so since those whose lives are endangered and assailed cannot defend themselves. . . . And if the public magistrates not only do not defend them, but by their laws and ordinances betray them to death at the hands of doctors or others, let them remember that God is the judge and avenger of innocent blood which cries from earth to heaven.[9]

And of eugenic sterilization by the state, he wrote:

> Public magistrates have no direct power over the bodies of their subjects. Therefore, where no crime has taken place and there is no cause present for grave punishment, they can never directly harm, or tamper with the integrity of the body, either for the reasons of eugenics or for any other reason.[10]

The Holy Office, guardian of faith and morals under the guidance of the Roman Pontiff, was asked in Hitler's heyday, whether the state may directly kill persons who have committed no capital crime, but who are useless to the nation and a public burden because of physical or psychic defects. The answer, given Dec. 2, 1940, was an emphatic negative, with the statement that this is contrary to natural law and to divine positive law.[11]

The state, in usurping divine authority over life, would be implicitly denying that higher authority, leaving no law but that made by the state and no right but that granted by the state, which is totalitarianism.

Fallacy in Alleged Morality

Another fallacy of euthanasiasts is their recourse to the right of self-defense, as if the family or the state could defend its comfort or its pocketbook from the burden of weak members by ending their lives. Euthanasia violates the fundamental condition of legitimate self-defense, that the aggression be unjust. Self-defense repels the unjust invasion of a right. Is the burden of caring for the unfit an injury to any right? Not every act which impairs a good to which I have a right, is thereby an injustice, an invasion of my rights. My rights are not absolute, but are limited by the rights of others. The state is not an unjust aggressor in condemning my land for a highway; the child is not an unjust aggressor in requiring expenditures for its support. The right of others in material goods and comforts cannot prevail against the higher right to life which exists in even the most burdensome person. If it were otherwise, his life, his innate human dignity, would be degraded to the status of a mere means to the well-being of others.

The life of the burdensome citizen outweighs the burden of his support; it is a higher good than the good of removing this burden from the family or the state. He therefore has no obligation of renouncing his right to life; in fact, he cannot directly renounce it, for this would be suicide. Hence his act of living cannot be an invasion of any right of another; it cannot be an unjust aggression. Consequently, there is no place for legitimate self-defense against the burden of caring for the unfit.

This is true even of the dangerous unfit, such as violent maniacs or those inflicted with incurable contagion. In an actual attack, such persons would be invading the right to life and could be violently repelled. But killing in self-defense is justified only in the act of aggression, and only if necessary to protect the threatened right. When a person is known to be dangerous, killing is not necessary, for a less harmful method is available. The actual attack can be forestalled by segregation. It would then be unjust for the state to neglect segregation and risk the danger to its citizens, or to go beyond the bounds of necessity and kill the dangerous person instead of segregating him.

But the saving of time and money resulting from the extermination of the incurable might be used to the great physical and moral profit of those who could be improved by the same expenditures. Granted that there are better uses for this time and money, this advantage may not be sought through the evil means of murder or suicide. I can benefit greatly by using my income to enlarge and improve my house, but this does not destroy the right of the man who holds my mortgage.

Euthanasiasts also contend that mercy murder is now practiced by many doctors. They would change it from murder to mercy and salve

the consciences of such doctors by repealing the law of God. Evidently, the legitimate relief to these consciences is to repeal the evil practice.

Sentimentalism or Reason

False philosophy undermines reason and leaves sentiment for the basis of the further argument that it is inconsistent to penalize a man for not killing a suffering dog, and then to hang a man for killing a suffering fellow man. We might retort that if we may hunt deer for food and sport, why not men? Or, reversing their contention, hanging is the penalty for killing a man; why not for killing a dog? This sentimentalism loses sight of the essential difference between man and beast which comes from the human immortal soul. It degrades man to the level of the brute, and makes the physician a veterinary. It overlooks the noble virtues that are practiced by the pain-ridden and by those who care for them. It supposes that pain and happiness are mutually exclusive, and that material productivity is the measure of a man's worth. It denies the supernatural, and negates the practice of penance, the heroism of the martyrs, and the blood of the Redeemer. Preaching pleasure instead of virtue, it makes earthly life the final purpose of man instead of a time of probation for eternal life in God.

Evil can often be best recognized in its fruits. Voluntary euthanasia would open the way to unnumbered abuses, such as pressure brought to bear upon the infirm by their heirs or by those who support them, or by their own sense of being burdensome; pressure upon the physician to suggest euthanasia for the relief of the family, or to allow himself more time for those who can be cured, and perhaps the charge that he is interested principally in continuing fees.

If the principle of justified suicide for sufficient reason were admitted, why should the reason be restricted to physical suffering? There may be greater suffering than physical pain in the psychic reaction to failure in business or marriage, to disgrace and imprisonment, or to any of the woes which now lead to suicide.

The Threat of a First Step

From voluntary euthanasia, it is only a step to the justification of mercy death for those unable to decide for themselves, such as imbeciles or deformed infants; then for those who would be considered unreasonably opposed to the removal of the burden of their care and support,—imprisoned criminals, the contagiously infected, minorities who are undesirable because of racial or religious prejudice, veterans incapacitated in the defense of their country, or anyone considered an apt subject for human vivisection.

Legalized euthanasia would be a confession of despair in the medical profession; it would be the denial of hope for further progress against presently incurable maladies. It would destroy all confidence in physicians, and introduce a reign of terror. Men would fear confinement in any hospital; they would shun surgery and medication; they would turn in dread from the man whose office wall the Hippocratic oath proclaims, "If any shall ask of me a drug to produce death I will not give it, nor will I suggest such counsel."

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1 New York Times, Sept. 28, 1946.
2 INS dispatch, Feb. 4, 1936.
3 Alphonsus de Liguori, *Theologia Moralis,* III, n. 367.
4 Pius XI, *On Christian Marriage* (translation), America Press, pp. 21-22.
5 Exodus, 20:13.
6 *Catholic Medical Guardian,* XV (Oct. 1937) 104.
7 Bonnar, *The Catholic Doctor* (New York: P. J. Kenedy & Sons), p. 103.
8 Exodus, 23:7.
9 *Op. cit.,* p. 20.
10 *ibid.,* p. 21.
11 For translation of this decree, *cf,* Bouscaren, *Canon Law Digest* (Milwaukee: Bruce Publishing Co.), II, p. 96.